

## CURRICULUM VITAE

Director

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# Theon van Dijk

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## Summary

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Theon van Dijk is a director at the Brussels office of E.CA. Theon has over 20 years' experience as an expert on the economics of competition law. He has provided expert economic advice to clients involved in competition law proceedings before the European Commission and competition authorities in the Netherlands, Belgium, Germany, France and the United Kingdom.

His consulting experience covers a wide range of industries including pharmaceuticals, biotechnology, consumer electronics, fast-moving consumer goods, broadcast services, lighting products, salt, sugar, beer, publishing, hospital services and telecommunications services. Theon has provided expert economic advice in all functional areas of competition law including mergers and acquisitions, abuse of dominance, cartel investigations and private damages claims, vertical and horizontal agreements, state aid and licensing conditions of intellectual property. He has appeared as an economic expert in various court cases and arbitration proceedings, and has acted as an arbitrator.

Theon started working in economic consultancy in 1996, after completing his PhD in industrial economics and intellectual property at Maastricht University and spending a year as a postdoctoral researcher at the University of Toulouse. Having worked in senior positions for major international consultancies in London and Brussels, in 2005 he founded Lexonomics, which joined forces with E.CA Economics in November 2016. Between 2013 and 2015 he held the rotating position of Chief Economist at the European Patent Office in Munich. Theon Van Dijk has published widely in the area of industrial economics, competition policy and intellectual property.

## Relevant experience

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Dr Van Dijk has advised law firms and corporate clients in numerous cases in all fields of competition law economics, including mergers, Article 101 and 102 TFEU cases (and equivalent provisions in national competition acts), State aid and cartel damages proceedings. His relevant experience since 2005, after founding Lexonomics, includes:

### I. Merger cases

Clients in merger cases were mostly the merging parties and in few occasions third parties (products or services in brackets):

- **DB/LSE** group (ongoing) – financial market services (EC phase II)
- **Parnassia/Antes** (ongoing) - mental healthcare (ACM phase II)
- **Holland Pharma/FACO** (ongoing) – wholesale and retail pharmacy products (ACM phase II)
- **Staatsloterij (SENS)/Lotto (SNS)** – land-based lotteries and bingo games (ACM phase II)
- **KPN/CIF** – fixed telephony, broadband internet and television (ACM phase II)
- **Royal Philips/Indal Group** – professional light fixtures, indoor and outdoor (European Commission case M.6357).
- **Eureko/De Friesland** – health insurance (ACM phase II)
- **Transdev/Veolia** - public transport (ACM phase II)
- **Agrifirm/Cehave** – animal food (ACM phase II)
- **Koninklijke Philips/Saeco International Group** – domestic appliances (European Commissio Case M.5547)
- **CSM/Royal Cosun** – sugar (ACM phase II)
- **Connexxion/GVU, Connexxion/Novio** - public transport (ACM phase II)

### II. Abuse of dominance cases (competition authority investigation or private litigation)

- **Funda NVM v. VBO** (ongoing) – According to VBO, an association of real estate agents, housing site Funda abuses its dominant position by applying discriminatory terms for Funda access to VBO compared to NVM members, another association of real estate agents and owner of Funda. Theon van Dijk provides economic advice to NVM and Funda in this case (market definition, assessment of dominance and potential abuse).
- **Nestlé v. Mars** – on 29 July 2011 the Den Bosch District Court issued an injunction against Mars Nederland prohibiting it from further rolling out its conditional rebate programme for petrol station shops in the Netherlands. Theon van Dijk carried out an economic analysis of the competitive effects of the Mars programme for the plaintiff in this case, Nestlé Nederland.
- **CRV v. ACM** – on 7 October 2010 the Dutch Trade and Industry Appeals Tribunal (CBb) published its judgment in the CRV case on various discount schemes of CRV that were assessed by the ACM as constituting abuse of dominance. At the request of CRV Theon van Dijk carried out an economic analysis from which it became clear that the discounts schemes did not have anticompetitive effects. The CBb decided, with numerous references to the economic analysis, that the discount schemes were not abusive.
- **Fixed telecom operators v. OPTA** - on 16 February 2010 the Dutch Trade and Industry Appeals Tribunal (CBb) published its decision upholding the 2008 market analysis decision regarding fixed terminating access

services by the Dutch telecommunications regulator OPTA. Theon van Dijk carried out a study on countervailing buyer power for OPTA that is central in this decision.

- **Spira v. De Beers** – At the request of Spira, a sightholder of De Beers, Theon van Dijk carried out an assessment of exclusionary effects of the Supplier of Choice selective distribution system introduced by de Beers.

### III. Horizontal and vertical agreements

In addition to a number of self-assessments of vertical or horizontal agreements for clients, experience in reviewing agreements includes the following:

- **Common undertaking by competitors.** For Brink's, Theon reviewed the cooperation agreement of the three main retail banks in the Netherlands to establish a common undertaking, owned by these banks, to carry out cash processing services for banks and retailers.
- **Coordinated behaviour in house foreclosure auctions.** For a number of house traders, Theon van Dijk carried out an economic assessment of the effects of coordination by traders in some phases of foreclosure auctions. This economic review is part of the appeal procedure against the decision by the ACM to fine this coordination.
- **Exclusive purchase obligation.** For a global company in construction materials, Theon carried out an economic assessment of an exclusive purchase obligation in contracts with a construction company in the Netherlands.
- **'Cover pricing'.** For a construction company under investigation by the ACM, Theon carried out an economic assessment of the practice of 'cover pricing', an exchange of information on the participation in specific tenders, in road- and waterwork tenders.
- **Exclusive purchase obligations in the Dutch beer market.** Following a competitive assessment of the Dutch beer market, on 7 June 2013 the ACM announced that there is no reason to prohibit exclusive purchase obligations in contracts between brewers and outlets. Theon van Dijk assisted Grolsch by carrying out an economic assessment of the studies that triggered the ACM to look into this market.
- **Exclusive supply obligations.** On 28 September 2012 the District Court in The Hague published its decision in the case of The Greenery and one of its member-growers. The court judgement was that the exclusive supply obligation between The Greenery and the grower does not infringe competition law provisions. Theon provided economic advice to The Greenery during the court procedures.
- **Competitive assessment of healthcare groups.** In July 2010 the Dutch Healthcare authority (NZa) published its view on competition aspects of healthcare groups, organisations in which individual healthcare providers cooperate to provide care for chronic diseases. In August 2010 the Dutch Competition authority NMa and the NZa jointly published their Guidelines Healthcare Groups. Theon van Dijk provided economic advice to the NZa in relation to both publications.
- **Collective preference policy health insurers.** For BOGIN (Association of the Dutch Generic Medicines Industry), Theon carried out an analysis of the competitive effects of collective and individual preference policy by health insurers in the Netherlands.

### IV. Cartels & economic damages calculation

Theon has advised clients in follow-on damages actions relating to the following cartels:

- **Sodium chlorate** - for defendant
- **Gas Insulated Switches** – for claimant

- **Lifts** – for defendant
- **Bitumen** –for defendant
- **Flour cartel** – for defendant
- **Feed phosphates** – for defendant

## **V. Regulation**

### **Telecommunications**

For the Dutch telecoms authority (OPTA, now ACM), carried out an analysis of the possible effects of countervailing buyer power on the tariffs set by network operators for fixed terminating access services; prepared an economic report for OPTA on the pricing pressure experienced by cable operators in the supply of retail television services; and assisted OPTA in various market analysis decisions between 2006 and 2011.

Provided economic advice to KPN regarding the competitive position of KPN's broadcasting activities.

### **Healthcare**

In July 2010 the Dutch Healthcare authority (NZa) published its view on competition aspects of healthcare groups, organisations in which individual healthcare providers cooperate to provide care for chronic diseases. In August 2010 the Dutch Competition authority NMa and the NZa jointly published their Guidelines Healthcare Groups. Provided economic advice to the NZa in relation to both publications.

## **VI. Intellectual property**

As Chief Economist, Theon carried out various studies for the European Patent Office, on the competitive effects of patent aggregators, economic effects of the unitary patent and Unified Patent Court, economics effects of introducing a grace period in Europe, and the role of patent offices in determining FRAND rates for standard-essential patents (SEPs).

## **VII. Arbitration**

Provided expert economic advice on behalf of parties involved in arbitration proceedings, and acted as arbitrator.

## **VIII. Economic studies**

Member of the Committee on Vertical Integration which prepared a report and advice to the Dutch Minister of Health, Welfare and Sport on the question whether a prohibition of vertical integration between health insurance companies and suppliers of healthservices is “necessary” and “proportional”.

Prepared a chapter, together with Frank Verboven, on the quantification of economic damages in “Issues in Competition Law and Policy” by the American Bar Association

Together with Freshfields Amsterdam, carried out a study for the Dutch Healthcare Authority on the definition of geographic markets for hospitals in the Netherlands.

Carried out a background study for the Dutch Scientific Council for Government Policy (WRR) into the relationship between regulation and investments in infrastructure.

## Professional experience

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From 11/2016	Director, E.CA Economics, Brussels
2005 – 2016	Founder and Director Lexonomics, Brussels & The Hague
2013 - 2015	Chief Economist, European Patent Office, Munich
2005	Visiting Researcher, Antwerp University
2002 - 2004	Partner, RBB Economics, Brussels
1997 - 2002	Senior Consultant, National Economic Research Associates, London & Brussels
1996 - 1997	Analyst, Netherlands Bureau for Economic Policy Analysis (CPB), The Hague

Member of the board of the Dutch Competition Law Association (Nederlandse Vereniging voor Mededingingsrecht), from 2006 to 2013.

Member of the Ministerial Committee on Vertical Integration in the Netherlands, which advised the Dutch Minister of Health, Welfare and Sport on competition law aspects of vertical integration of health insurers and hospitals, 2009.

Lecturer in Competition Economics, Antitrust Law, Grotius Academy (postdoctoral education for lawyers), 2008-2011.

## Academic experience

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1995 - 1996	Postdoctoral Researcher, Institut d'Économie Industrielle, Toulouse University
1989 - 1994	Ph.D. in Economics, Maastricht University
1985 - 1989	M.A. in Economics, Maastricht University (cum laude)

## Publications and working papers

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### Academic publications

- "Bertrand Competition with an Asymmetric No-discrimination Constraint" (with Jan Bouckaert and Hans Degryse), *Journal of Industrial Economics*, Volume LXI, March 2013, pp. 62-83.
- "Access Regulation, Competition, and Broadband Penetration: An International Study" (with Jan Bouckaert and Frank Verboven), *Telecommunications Policy*, December 2010, volume 34, issue 11, pp. 661-671
- "Implementing the passing-on defence in cartel damages actions" (with Frank Verboven), *Global Competition Litigation Review*, 2010, volume 3, pp. 98-105.
- "Cartel Damages Claims and the Passing-On Defense" (with Frank Verboven), *Journal of Industrial Economics* Vol 57(3), pp: 457-491, September 2009.
- "Quantification of Damages" (with Frank Verboven), in: Wayne D. Collins, ed., *Issues in Competition Law and Policy*, American Bar Association, Antitrust Section, 2008.

- "Unilateral Effects in Retail Chain Mergers: An Application to Supermarkets" (with Andrea Coscelli and Simon Baker), *European Competition Law Review* 23 (4): 180-192 (2002).
- "General or Specific Competition Rules for Network Utilities?", *Journal of Network Industries*, 2: 93-111 (2001).
- "Licence Contracts, Future Exchange Clauses, and Technological Competition", *European Economic Review*, 44: 1431-1448 (2000).
- "Passing the European Patent Office: Evidence from the Data-Processing Industry" (with Geert Duysters), *Research Policy* 27: 937-946 (1998).
- "Competition and Innovation" (with Jan Boone), *De Economist* 146 (3): 445-461 (1998).
- "Patent Height and Competition in Product Improvements", *Journal of Industrial Economics* 44: 151-167 (1996).
- "Innovation Incentives through Third-Degree Price Discrimination in a Model of Patent Breadth", *Economics Letters*, 47: 431-435 (1995). Reprinted in: *The Economics of Price Discrimination, International Library of Critical Writings in Economics*, George Norman (ed.), Edward Elgar, Cheltenham, 1999.

### **Book contributions & publications in Dutch**

- "Het CBB komt eruit voor Bolletje beschuit: de ACM bakt het te bruin", *Markt & Mededinging*, forthcoming.
- "Economische methoden en terminologie voor horizontale concentraties" (with Paul de Bijl), *Tijdschrift mededingingsrecht in de praktijk*, volume 3, september 2016, SDU.
- "Nieuwe kartelwaakhond moet tanden tonen" (with Paul de Bijl), *Het Financieele Dagblad*, 9 October 2012.
- "Alleen concurrentie relevant voor nieuwe Autoriteit Consument en Markt" (with Paul de Bijl), *Me Judice*, 25 September 2012.
- "Mededingingsbeleid en publieke belangen: een economisch perspectief" (with Paul de Bijl), *Markt & Mededinging*, October 2012, nr. 4, pp. 149- 156.
- "Annotatie: Van Drie/Alpuro" (in Dutch), *Markt & Mededinging*, december 2011, nr. 6, pp. 245-248.
- "CBB vernietigt omroepbesluiten OPTA ten onrechte" (with Jonas Rosenstok), *Actualiteiten Mededingingsrecht* 5, October 2010.
- "The passing-on defence and the full compensation principle" (with Frank Verboven), *Concurrences*, 3-2010.
- "The New EC Block Exemption for Vertical Restraints: a Step Forward and a Missed Opportunity" (with Paul Lugard), *CPI Antitrust Journal*, June 2010 (2).
- "De nieuwe groepsvrijstelling verticale beperkingen – een bescheiden stap vooruit" (with Paul Lugard), *Markt & Mededinging* 3: 107-111, June 2010.
- "De ontwerp groepsvrijstelling verticale beperkingen – een stap vooruit?" (with Paul Lugard), *Markt & Mededinging*, 5: 148-155, November 2009.
- "Imperfect Enforcement of Predatory Pricing Law" (with Dag Morten Dalen, Norwegian School of Management), Working Paper, 24 April 2009.
- "Niet-horizontale concentraties en diagonaal economisch denken", *Markt & Mededinging*, december 2005, 8: 8, pp: 239-246.
- "Assessing Unilateral Effects in Bidding Markets: Mixed Progress" in: L. Hancher and P. Lugard (eds.), *On the Merits, Current Issues in Competition Law and Policy (Liber Amicorum Peter Plompen)*, Intersentia, 2005.
- "An Address Model of Patent Breadth with Two Countries" (with Curtis Eaton and Patrick van Cayseele) in: *Applied Microeconomics Theory: Selected Essays of B. Curtis Eaton*, Edward Elgar Press, 2003.

- “De rooiprijzetest in de Deutsche Post AG zaak”, Tijdschrift Privatisering, 2002.
- “Gezamenlijke marktmacht en het besluit inzake Airtours/FirstChoice” (with Simon Baker), Markt & Mededinging, 3(3), juni 2000: 89-95
- “Ervaringen met Public Private Partnerships in het Verenigd Koninkrijk” (with Michael Spackman), Economisch Statistische Berichten, 8 October 1998, 83(4170): 10-15.
- “Prijsregulering voor netwerkdiensten” (in Dutch), Economisch Statistische Berichten, 27 March 1998, 83: 253-256.
- “Regulatory Reform and Competition Policy” and “Science and Technology Policy” (both with George Gelauff), Chapters in: Challenging Neighbours, Rethinking Institutions in Germany and the Netherlands, Springer Verlag, 1997.
- “Economic Implications of Converging Patent Breadth in Europe” (with Patrick Van Cayseele), in John Hagedoorn (ed.), Technical Change and the World Economy, Cheltenham: Edward Elgar, 1995
- The Limits of Patent Protection, Essays on the Economics of Intellectual Property Rights, PhD Thesis, Maastricht: Maastricht University Press, 1994.
- “Naar een economische theorie van imperfecte octrooibescherming”, Vraagstelling, 1994, 1(4): 95-102.
- “Technologiebeleid in een economisch perspectief” (with Luc Soete), in R.T. Frambach en E.J. Nijssen (eds.), Technologie en Strategisch Management, Utrecht: Lemma, 1992.
- “The Effect of Novelty Requirements on Subsequent Innovations”, Tinbergen Institute Research Bulletin, 1992, 4: 187-195.

### **Selected policy reports**

- “Regulation and Broadband Penetration – What is Required to Regain Speed in Belgium?” (2008), with Jan Bouckaert and Frank Verboven, financed by Proximus, 2008.
- “Regulation and investments in infrastructure”, chapter in volume “New Perspectives on Investment in Infrastructures” by the Dutch Scientific Council for Government Policy (WRR), 2008.
- Executive Summary of “The Economic Consequences of the Choice of a Regime of Exhaustion in the Area of Trademarks” (with John Rhys et al), NERA, London, February 1999. Reprinted in The Economics of Intellectual Property, International Library of Critical Writings in Economics, Towse and Holzbauer (eds.), Edward Elgar, Cheltenham, 2002.

## **Presentations at Conferences and Seminars**

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Speaker at various competition economics seminars and training days, including events organised at the European Commission, OFTEL, OPTA, US Chamber of Commerce to the EU, and academic institutions (Tilburg University, University of Liege, Catholic University of Leuven, LUISS Guido Carli, Rome). Presented academic papers at several EARIE and EEA conferences. On behalf of the European Patent Office, he gave presentations on economic aspects of patents at conferences in Rio de Janeiro, Tokyo, Singapore, for the OECD, the European Commission and various national patent offices in Europe.

## Languages

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Dutch & English (active & passive: excellent)

German & French (passive: very good; active: basic)